IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.Rev.Pet.No. 3723 of 2007()

CRA.265/2006 of I ADDL. SESSIONS COURT, PALAKKAD
STC.3147/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PALAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED:

E.T. MOHANAN, S/O. THEETHAN,
KIZHAKKE GRAMAM, PERUVEMBA, PALAKKAD.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

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1. V.RAMAKRISHNAN
S/O LATE VELUNNI
RAKKATH HOUSE, KINASSERY
PALAKKAD

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3723 OF 2007

Dated this the 18th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T.Case No.3147/2004 on the file of the J.F.C.M.-II, Palakkad challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

Even at the stage of Ext.P5 reply notice the accused had taken up the defence that he had lost two cheques and one of the cheques has been misused by the complainant for filing the complaint. The accused was examined as DW1 and he stated that the complainant borrowed Rs.25,000/- from the accused as per a cheque issued by him on 15.5.02 and when that amount was demanded back, the relationship between the accused and the complainant's brother-in-law Induchoodan got strained and Induchoodan who was a frequent visitor in the house of the accused had stolen the blank cheque from the custody of the accused and had misused the same. Moreover, the date of cheque which was originally 2.2.04 has been corrected as 3.2.04 and this amounts to material alteration rendering the document void under section 87 of the Negotiable Instruments Act. The courts below have overlooked these vital aspects while convicting the accused.

5. I am afraid that I cannot agree with the above submissions. The lower appellate court did address itself to the above contention and noted that the definite case of the accused in Ext.P5 reply notice that he had lost two cheque leaves was not even suggested to PW1 when he was cross-examined. As DW1 the revision petitioner came out with a third version PW1, the complainant, has denied the suggestion that

there is material alteration in the date of the cheque. The specific case of PW1 was that the cheque filled in all respects as it is now found was brought and the accused affixed his signature in his presence. He was not asked to whether the correction in the date was subsequent to the handing over of the cheque. If the date was corrected even at the time of drawing of the cheque, it cannot amount to material alteration. Material alteration so as to render a document void should be one which is subsequently made without the consent or concurrence of the drawer of the cheque. No such question was put to PW1. The accused had also not taken any steps against Induchoodan for allegedly stealing blank cheque leaves from the accused. It was after taking note of all these circumstances that the courts below disbelieved the defence set up by the revision petitioner. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition

hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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